

**FILED**

NOV 17 2008

IN THE UNITED STATES DISTRICT COURT FOR

THE WESTERN DISTRICT OF OKLAHOMA

ROBERT D. DENNIS, CLERK  
U.S. DIST. COURT, WESTERN DIST. OF OKLA.  
BY W. H. DEPUTY

MARVIN COLTER,

Plaintiff,

vs.

No. CIV-08-449-W

JOHN WHETSEL and DISTRICT  
COURT OF OKLAHOMA COUNTY,

Defendants.

**ORDER**

On October 9, 2008, United States Magistrate Judge Valerie K. Couch issued a Report and Recommendation in this matter and recommended that the Court not only deny the Motion In Res Ipsa Loquitur filed by plaintiff Marvin Colter, but also dismiss Colter's amended complaint, wherein Colter has sought money damages under title 42, section 1983 of the United States Code for certain alleged violations of his constitutional rights. Colter was advised of his right to object, and the matter now comes before the Court on Colter's Objection to Report and Recommendation.

Upon de novo review of the record, the Court concurs with Magistrate Judge Couch's suggested disposition of Colter's motion and his amended complaint. In Counts I and III of his amended complaint, Colter has complained about the conditions of his confinement as a pretrial detainee at the Oklahoma County Detention Center. The allegations advanced in support of these counts, even liberally construed, fail to present "enough facts to state . . . claim[s] to relief [under the various constitutional amendments that Colter has cited] that . . . [are] plausible on [their] . . . face." Bell Atlantic Corp. v. Twombly, 127 S. Ct. 1955, 1969 (2007).

Likewise, Colter's claim as set forth in Count II, where he has complained that his rights guaranteed by the equal protection clause of the fourteenth amendment to the United States Constitution were violated because he did not receive a probable cause determination following his warrantless arrest, lacks sufficient factual matter to suggest that Colter is entitled to relief. Id. at 1965.

As to the remaining matters, the Court finds that Colter's claims for monetary relief against defendant District Court of Oklahoma County, which operates as an arm of the State of Oklahoma, are barred by the eleventh amendment to the United States Constitution. And, after consideration of Colter's Motion In Res Ipsa Loquitur, the Court, to the extent the allegations therein supplement the allegations in the amended complaint, confirms that dismissal of Counts I, II and III is warranted.

Accordingly, the Court


(1) ADOPTS the Report and Recommendation issued on October 9, 2008;

(2) DENIES Colter's Motion In Res Ipsa Loquitur [Doc. 8] file-stamped May 7, 2008;

and

(3) DISMISSES this matter. E.g., 28 U.S.C. § 1915A(b)(1).

ENTERED this 17<sup>th</sup> day of November, 2008.

  
LEE R. WEST  
UNITED STATES DISTRICT JUDGE